



DEPARTMENT OF COMMERCE

International Trade Administration

[C-580-884]

Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Notice of Court Decision Not in Harmony with the Results of Countervailing Duty Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 19, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Hyundai Steel Company v. United States*, Court No. 20-03799, sustaining the U.S. Department of Commerce's (Commerce) first remand results pertaining to the administrative review of the countervailing duty (CVD) order on certain hot-rolled steel flat products (HRS) from the Republic of Korea (Korea) covering the period of review (POR) January 1, 2017, through December 31, 2017. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the countervailable subsidy rate assigned to Hyundai Steel Company (Hyundai Steel).

DATES: Applicable September 29, 2022.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6274.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 2020, Commerce published its *Final Results* in the 2017 CVD administrative review of HRS from Korea. In the *Final Results*, Commerce, after examining the information on the record, found that Hyundai Steel received additional benefits from certain other fees under the Port of Incheon program (*i.e.*, harbor exclusive usage fee(s)) that are measurable.¹ We found that, because necessary information was not available on the record with respect to these fees, it was appropriate to calculate the benefit from them based on facts available, pursuant to section 776(a)(1) of the Tariff Act of 1930, as amended (the Act). Commerce computed a 0.06 percent *ad valorem* subsidy rate for the provision of port usage rights at the Port of Incheon program.

Hyundai Steel appealed Commerce's *Final Results*. On August 27, 2021, the CIT remanded the *Final Results* to Commerce to reconsider our application of facts available and, if appropriate, the rate assigned to Hyundai Steel.²

In its final remand redetermination, issued in October 2021, Commerce recalculated the benefit amount Hyundai Steel received under the provision of port usage rights at the Port of Incheon program. As a result of our redetermination, we find that Hyundai Steel's overall subsidy rate for the POR is *de minimis*.³ The CIT sustained Commerce's final redetermination.⁴

¹ See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2017*, 85 FR 64122 (October 9, 2020) (*Final Results*), and accompanying Issues and Decision Memorandum, at Comment 6.

² See *Hyundai Steel Company v. United States*, Court No. 20-03799, Slip Opinion 21-112 at 6-7 (CIT August 27, 2021).

³ See *Final Results of Redetermination Pursuant to Court Remand, Hyundai Steel Company v. United States*, Court No. 20-03799, Slip Op. 21-112 (CIT August 27, 2021), dated October 20, 2021, available at <https://access.trade.gov/resources/remands/21-122.pdf>.

⁴ See *Hyundai Steel Company v. United States*, Court No. 20-03799, Slip Opinion 22-109 at 10 (CIT September 19, 2022).

Timken Notice

In its decision in *Timken*,⁵ as clarified by *Diamond Sawblades*,⁶ the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Act, Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s September 19, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce’s *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Hyundai Steel as follows:

Company	Subsidy Rate (percent <i>ad valorem</i>)
Hyundai Steel Company ⁷	0.46*

* (*de minimis*)

Cash Deposit Requirements

Because Hyundai Steel has a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries of HRS from Korea that were produced and/or exported by Hyundai Steel Co., Ltd., (a/k/a Hyundai Steel Company), that were the subject of Commerce’s *Final Results* that were entered, or withdrawn from warehouse, for consumption, during the period January 1, 2017, through December 31,

⁵ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

⁶ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

⁷ This company is also known as Hyundai Steel Co., Ltd.

2017. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess CVDs on unliquidated entries of subject merchandise produced and/or exported by Hyundai Steel in accordance with 19 CFR 351.212(b). We will instruct CBP to assess CVDs on all appropriate entries covered by this review when the *ad valorem* rate is not zero or *de minimis*. Where an *ad valorem* subsidy rate is zero or *de minimis*,⁸ we will instruct CBP to liquidate the appropriate entries without regard to CVDs.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: September 27, 2022.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

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⁸ See 19 CFR 351.106(c)(2).